



# PUBLIC NOTICE

Federal Communications Commission  
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**DA 03-3938**  
**Released: December 11, 2003**

## **DOMESTIC SECTION 214 APPLICATION FILED FOR ACQUISITION OF ASSETS OF NOW COMMUNICATIONS, INC. BY NOW ACQUISITION CORPORATION AND ESSEX ACQUISITION CORPORATION**

### **STREAMLINED PLEADING CYCLE ESTABLISHED**

#### **WC Docket No. 03-248**

On November 26, 2003, NOW Communications, Inc. (NOW), Now Acquisition Corporation (NAC), and Essex Acquisition Corporation (EAC) (collectively, the Applicants) filed an application, pursuant to sections 63.03 and 63.04 of the Commission's rules,<sup>1</sup> requesting approval for NAC and EAC to acquire the assets of NOW.<sup>2</sup>

Applicants assert that this transaction is entitled to presumptive streamlined treatment pursuant to section 63.03(b)(2)(i) of the Commission's rules because the proposed transaction would result in the transferee having a market share in the interstate, interexchange market of less than 10 percent; the transferee would provide competitive telephone exchange services or exchange access services exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the transaction; and neither of the applicants is dominant with respect to any service.<sup>3</sup>

NOW, a corporation, is authorized to provide local exchange and/or interexchange services in forty-nine states and the District of Columbia. EAC, a corporation, and NAC, a corporation, are wholly-owned subsidiaries of BiznessOnline.com, Inc. (Biz) d/b/a VeraNet Solutions. MCG

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<sup>1</sup> 47 C.F.R. §§ 63.03, 63.04; *see* 47 U.S.C. § 214.

<sup>2</sup> Applicants have also filed transfer of control applications related to international services. Any action on this domestic section 214 application is without prejudice to Commission action on other related pending applications.

<sup>3</sup> 47 C.F.R. § 63.03(b)(2)(i); *see* 47 C.F.R. § 63.03(b)(3) ("For purposes of (b)(1) and (2) of this paragraph, the terms 'applicant,' 'carrier,' 'party,' and 'transferee' (and their plural forms) include any affiliates of such entities within the meaning of section 3(1) of the Communications Act of 1934, as amended."); Letter from Scott Kellogg, Secretary, NAC, Assistant Secretary, EAC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-248 at 1 (filed Dec. 8, 2003).

Capital Corporation (MCG) owns approximately 71% of the equity in Biz. Entities affiliated with Goldman Sachs Group, Inc. own approximately 19% of the equity in MCG. Currently, EAC is providing local exchange and interexchange telecommunications services pursuant to authority granted in seven states (Connecticut, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, and West Virginia). NAC is not yet providing telecommunications services in any geographic areas.

On March 4, 2003, NOW filed for reorganization under Chapter 11 of the U.S. Bankruptcy Laws.<sup>4</sup> Pursuant to an asset purchase agreement filed with the bankruptcy court, MCG will acquire the assets of NOW, and assign the same to EAC and NAC. On November 18, 2003, the bankruptcy court approved the asset purchase agreement. Included among the assets to be assigned are the customers of NOW and NOW's regulatory authorizations to provide local and interexchange telecommunications services (where assignable). EAC will acquire such assets in the following states: California, Florida, Illinois, Indiana, Maryland, Massachusetts, Michigan, New Jersey, Ohio, Pennsylvania, Rhode Island, Texas, and West Virginia. NAC will acquire the assets of NOW in all other NOW operating states.

The Applicants assert that the proposed transaction will serve the public interest because the infusion of NOW's assets into NAC and EAC will supplement EAC's ability to compete in the marketplace for local exchange and interexchange telecommunications services, and allow NAC to immediately enter that marketplace as a vibrant competitor. Further, consumers will benefit from the availability of increased telecommunications products and service options, particularly for low-income, residential customers, who have few, if any, alternatives for service. Moreover, this proposed transaction will ensure NOW's customers of uninterrupted service.

### **GENERAL INFORMATION**

The acquisition of assets identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any acquisition of assets application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Interested parties may file **comments within 14 days and reply comments within 21 days** of this notice.<sup>5</sup> Unless otherwise notified by the Commission, Applicants are permitted to transfer assets on the 31<sup>st</sup> day after the date of this notice.<sup>6</sup> Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

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<sup>4</sup> On December 10, 2003, the Applicants notified the Commission of NOW's debtor-in-possession status. *See* Letter from Scott Kellogg, Secretary, NAC, Assistant Secretary, EAC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-248 (filed Dec. 10, 2003).

<sup>5</sup> *See* 47 C.F.R. § 63.03(a).

<sup>6</sup> Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the subject line "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

**In addition, one copy of each pleading must be sent to each of the following:**

- (1) the Commission's duplicating contractor, Qualex International, 445 12<sup>th</sup> Street, S.W., Room CY-B402, Washington, D.C. 20554; e-mail: [qualexint@aol.com](mailto:qualexint@aol.com); facsimile: (202) 863-2898; phone: (202) 863-2893;
- (2) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, 445 12<sup>th</sup> Street, S.W., Room 5-C437, Washington, D.C. 20554; e-mail: [twilson@fcc.gov](mailto:twilson@fcc.gov);
- (3) Christi Shewman, Competition Policy Division, Wireline Competition Bureau, 445 12<sup>th</sup> Street, S.W., Room 5-C142, Washington, D.C. 20554; e-mail: [Christi.Shewman@fcc.gov](mailto:Christi.Shewman@fcc.gov);
- (4) Julie Veach, Competition Policy Division, Wireline Competition Bureau, 445 12<sup>th</sup> Street, S.W., Room 5-C124, Washington, D.C. 20554; e-mail: [julie.veach@fcc.gov](mailto:julie.veach@fcc.gov);
- (5) Cynthia Bryant, Telecommunications Division, International Bureau, 445 12<sup>th</sup> Street, S.W., Room 7-A623, Washington, D.C. 20554; email: [Cynthia.Bryant@fcc.gov](mailto:Cynthia.Bryant@fcc.gov); and

(6) Christopher Killion, Office of General Counsel, 445 12<sup>th</sup> Street, S.W., Room 8-C740, Washington, D.C. 20554; e-mail: [ckillion@fcc.gov](mailto:ckillion@fcc.gov).

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

For further information, please contact Tracey Wilson at (202) 418-1394 or Christi Shewman at (202) 418-1686.

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